

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

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|---------------------------------------|---|----------------------------|
| LLEWELLYN PATRICK LAYSA, |) | CIV. NO. 07-00088 JMS-BMK |
| |) | |
| Petitioner, |) | |
| |) | FINDING AND |
| vs. |) | RECOMMENDATION THAT |
| |) | PETITION FOR HABEAS CORPUS |
| IWALANI WHITE, Acting Director, |) | BE GRANTED |
| Department of Public Safety, State of |) | |
| Hawaii; |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

FINDING AND RECOMMENDATION THAT PETITION FOR HABEAS
CORPUS BE GRANTED

On February 22, 2007, Petitioner Llewellyn Patrick Laysa
("Petitioner") filed a petition for writ of habeas corpus pursuant to 28 U.S.C. §
2254. After careful consideration of the petition and all other filings, the Court
hereby FINDS and RECOMMENDS that the petition for habeas corpus be
GRANTED and that Petitioner be resentenced.

On November 30, 2005, Petitioner was convicted of two class-C
felony offenses: one count of promoting a dangerous drug in the third degree under

Hawaii Revised Statute § 712-1243 and one count of unlawful use of drug paraphernalia under Hawaii Revised Statute § 329-43.5(a). Petitioner was sentenced to two concurrent ten-year sentences pursuant to Hawaii's extended-term sentencing regime.

On January 19, 2007, the Hawaii Supreme Court affirmed Petitioner's conviction. Petitioner then filed the present action. The only ground for habeas relief he asserts is that the imposition of his extended term sentences violated Apprendi v. New Jersey, 530 U.S. 466 (2000). Respondent Iwalani White ("Respondent") filed an answer on April 26, 2007, and Petitioner filed a reply on May 9, 2007. On May 18, 2007, the State notified the Court that it was withdrawing its opposition to Petitioner's habeas petition.

Accordingly, the Court hereby FINDS that under Kaua v. Frank, 436 F.3d 1057 (9th Cir. 2006), Petitioner's extended term sentencing violated Apprendi and RECOMMENDS that habeas corpus be GRANTED and petitioner resentenced.

IT IS SO FOUND AND RECOMMENDED.



/s/ Barry M. Kurren
United States Magistrate Judge
Dated: June 4, 2007

Laysa v. White; Civ. No. 07-88 JMS-BMK; FINDING AND
RECOMMENDATION THAT PETITION FOR HABEAS CORPUS BE
GRANTED.